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U.S. COURT  
CLERK - J. 21 2:55  
[Signature]

*Counsel for Pocatello Dental Group, P.C.*

**UNITED STATES DISTRICT COURT  
DISTRICT OF IDAHO**

POCATELLO DENTAL GROUP, P.C., )  
an Idaho professional corporation, )  
 )  
Plaintiff, )

vs. )

INTERDENT SERVICE CORPORATION, )  
a Washington corporation, )  
 )  
Defendant. )

Case No. CIV 03-450-E-BLW

INTERDENT SERVICE CORPORATION, )  
a Washington corporation, )  
 )  
Counterclaimant, )

**MEMORANDUM IN  
SUPPORT OF TEMPORARY  
RESTRAINING ORDER**

vs. )

POCATELLO DENTAL GROUP, P.C., an )  
Idaho professional corporation; DWIGHT G. )  
ROMRIELL, individually; LARRY R. )  
MISNER, JR., individually; PORTER )  
SUTTON, individually; ERNEST SUTTON, )  
individually; GREGORY ROMRIELL, )  
individually; ERROL ORMOND, individually; )  
and ARNOLD GOODLIFFE, individually; )

Counterdefendants. )

COMES NOW the Plaintiff herein, and in support of its Motion for Temporary Restraining Order, submits this memorandum to the Court for its consideration.

## STATEMENT OF FACTS

1. On October 1, 2004, at approximately 4:30 pm MDT, without prior notice to Pocatello Dental Group as to the date and time on which it intended to do so, InterDent Service Corporation ("ISC") unilaterally closed the Pocatello office of Pocatello Dental Group.
2. Since then ISC has removed from the Pocatello Dental Group premises the dental equipment, dental supplies, and patient records used by the dentists and hygienists of Pocatello Dental Group to provide dental care to its patients. ISC also removed personal property belonging to the Plaintiff and other dentists and persons employed by ISC and PDG, without the owner's consent. ISC has also disconnected the dentist's direct phone numbers and has left a recorded message on the main number that Pocatello Dental Group is not accepting patients. Plaintiff did not authorize this message.
3. ISC has known for days, if not weeks, that it was going to unilaterally close the Pocatello Dental Group office on October 1, 2004. Nonetheless, ISC employees continued to schedule patients for treatment by Pocatello Dental Group's dentists and hygienists on dates subsequent to October 1, 2004. Those patients are having their appointments unilaterally cancelled by ISC.
4. Article 2, Paragraph 2.1 of the Management Agreement between Pocatello Dental Group and ISC states that *"Nothing in this Agreement shall be construed to alter or in any way affect the legal, ethical and professional relationship between and among Provider [PDG's dentists*

*and hygienists] and Provider's patients, nor shall anything contained in this Agreement abrogate any right or obligation arising out of or applicable to the dentist-patient relationship."*

5. Pocatello Dental Group's dentists and hygienists owe an ethical duty to their patients to assure the continuity of their dental care.

6. Bruce Call, an executive employed by ISC was instrumental in the closure of the Pocatello Dental Group office at the Pine Ridge Mall. Mr. Call has been asked for a list containing the names, addresses and telephone numbers of current patients and patients scheduled to receive dental care from Pocatello Dental Group dentists and hygienists after October 1, 2004. Mr. Call has refused to provide Pocatello Dental Group with this information. Any patient calling Pocatello Dental Group for an explanation are simply told that Pocatello Dental Group is not accepting new patients. This phone message was authorized by ISC and not the Plaintiff.

7. The names, addresses and telephone numbers of current patients and patients scheduled to receive dental care from Pocatello Dental Group dentists and hygienists after October 1, 2004, is readily available to ISC on paper records, electronic media or computer records, including calendaring and billing databases. It would not be burdensome for ISC to provide the requested information.

8. ISC has turned over patient files to Pocatello Dental Group. Those files number in the thousands. They are not organized in any meaningful way. They do not allow Pocatello Dental Group to promptly and timely ascertain (1) the names, addresses and telephone numbers of current, as opposed to past/non-current patients and (2) the names, addresses and telephone numbers of current patients scheduled to receive dental care after October 1, 2004.

9. It is not entirely clear that even a manual examination of these patient files will allow Plaintiff or its dentists and hygienists to ascertain the names, addresses and telephone numbers of those patients abandoned by ISC who have been scheduled by ISC employees to receive dental care from the Plaintiff's dentists and hygienists after October 1, 2004.

10. Without the names, addresses and telephone numbers of current, as opposed to past/non-current patients, and the names, addresses and telephone numbers of current patients scheduled to receive dental care after October 1, 2004, Pocatello Dental Group and its dentists and hygienist are unable to honor their legal, ethical and professional duties owed to their patients by taking affirmative steps to see that they receive continuity of care by responsible dental professionals in a timely manner.

11. ISC's conduct, as summarized above, has resulted in, and threatens to continue to result in irreparable harm to the Plaintiff's dentists and hygienists, and the patients abandoned by ISC. The harm includes the violation of rights belonging to the patients of Pocatello Dental Group's dentists and hygienists, the continuity of dental care of those patients, potential disciplinary action against Pocatello Dental Group's dentists and hygienists by the Idaho Board of Dentistry, and possible malpractice claims and lawsuits against Pocatello Dental Group's dentists and hygienists for the harm caused to the patients by ISC's unilateral closure of the PDG office.

12. Unless ISC is restrained from refusing to provide the requested information to Plaintiff, Plaintiff and its dentists and hygienist will not be able to honor their legal, ethical and professional relationships with these patients, and the dentist-patient relationship will be abrogated in violation of Article 2, Paragraph 2.1 of the Management Agreement.

## ARGUMENT

Article 2, Paragraph 2.1 of the Management Agreement between Pocatello Dental Group and ISC states that *"Nothing in this Agreement shall be construed to alter or in any way affect the legal, ethical and professional relationship between and among Provider [PDG's dentists and hygienists] and Provider's patients, nor shall anything contained in this Agreement abrogate any right or obligation arising out of or applicable to the dentist-patient relationship."*

Notwithstanding the contractual prohibition of the kind of conduct alleged above, ISC has engaged in conduct which has altered and adversely affected the legal, ethical and professional relationship between Pocatello Dental Group's dentists and hygienists and their patients by unilaterally, without effective prior notice, closing the Pocatello Dental Group office.

This office closure occurred on October 1, 2004, notwithstanding the fact that ISC employees had engaged in a course of scheduling Pocatello Dental Group patients for dental care after October 1, 2004. Prior to October 1, 2004 ISC had determined it was going to close the Pocatello Dental Group on October 1, 2004, yet it continued to allow its own employees to schedule patients for dental care *after* October 1, 2004. ISC knew that these scheduled patients could not be timely cared for by Pocatello Dental Group's dentists and hygienists once the office was closed.

ISC's conduct was calculated to cause the most harm possible to Pocatello Group patients. Many, if not all, of the patients are receiving on-going and critical dental care. The conduct of ISC has left these patients abandoned in mid stream of their dental treatment. The conduct of ISC has violated the rights of the patients of Pocatello Dental Group's dentists and hygienists. The conduct of ISC has resulted in the potential disciplinary action against Pocatello Dental Group's dentists and

hygienists by the Idaho Board of Dentistry, and possible malpractice claims and lawsuits against Pocatello Dental Group's dentists and hygienists for the harm caused by ISC's unilateral closure of the PDG office.

The harm to the patients of Pocatello Dental Group's patients, dentists and hygienists can be minimized if Pocatello Dental Group is immediately provided: (1) the names, addresses and telephone numbers of current patients, and (2) the names, addresses and telephone numbers of current patients scheduled to receive dental care after October 1, 2004.

This information is readily available to ISC because this information is either in cumulative written or electronic records, including billing and calendaring records, and with a minimal amount of time and effort can be provided to Pocatello Dental Group.

If Pocatello Dental Group is required to "glean" this information from the thousands of unorganized and uncategorized patient files delivered to Pocatello Dental Group on August 4, 2004, it will take hundreds of hours to review the patient charts, determine who is a current patient and who is not, and then Pocatello Dental Group will have to call the "current" patients to see if they have any appointments with dentists or hygienists of the Pocatello Dental Group scheduled after October 1, 2004.

## **REQUESTED RELIEF**

The Court is asked to issue its temporary restraining order restraining the Defendant InterDent Service Corporation from (1) refusing to immediately surrender to the Plaintiff the names, addresses and telephone numbers of all current patients of the Plaintiff and its dentists, (2) refusing to immediately surrender to the Plaintiff the names, addresses and telephone numbers of all patients

of the Plaintiff and its dentists who were scheduled to receive dental care on and after October 2, 2004, and (3) refusing to immediately surrender to the Plaintiff and its dentists their personal property, which personal property ISC removed from the Pocatello Dental Group office without the owners' consent.

The Court is asked to timely schedule a hearing on its issuance of an injunction permanently enjoining InterDent Service Corporation from (1) refusing to immediately surrender to the Plaintiff the names, addresses and telephone numbers of all current patients of the Plaintiff and its dentists, (2) refusing to immediately surrender to the Plaintiff the names, addresses and telephone numbers of all patients of the Plaintiff and its dentists who were scheduled to receive dental care on and after October 2, 2004, and (3) refusing to immediately surrender to the Plaintiff and its dentists their personal property, which personal property ISC removed from the Pocatello Dental Group office without the owners' consent.

Dated this 4 day of October, 2004.

**COOPER & LARSEN, CHTD**

Attorneys for Plaintiff

By: 

Ron Kerl

CERTIFICATE OF SERVICE

I HEREBY CERTIFY on the 4 day of October, 2004, I served a true and correct copy

of the foregoing document as follows:

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